

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUDITH B. MEMBLATT,

05 CV 1021 (RJD) (LB)

Plaintiff,

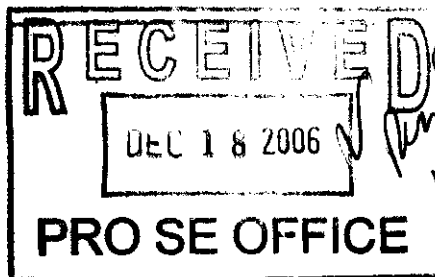
Pro Se

-against-

JAIME A. RIOS, et al.,

Defendants.
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MEMORANDUM OF LAW IN OPPOSITION



Submitted by:
JUDITH B. MEMBLATT
Plaintiff Pro Se
98-51 65th Avenue #2A
Rego Park, NY 11374

Preliminary Statement

This memorandum of law is submitted in opposition to the cross-motion brought by defendants' Jaime Rios, Lauren DeSole, Anthony D'Angelis, Robert W. Gardner, Sandra Newsome and Heidi Higgins for "reconsideration, or in the alternative, clarification," of the Court's order, dated November 14, 2006 and docketed November 20, 2006, which denied state defendants' Rule 12(b)(6) motion to dismiss the complaint with the exception of dismissing plaintiff's claims against defendants Jonathan Lippman and Steven W. Fisher.

Argument

State defendants' cross-motion must be denied in its entirety inasmuch as the movants' have failed to demonstrate any basis for the relief therein requested.

At the outset, it is noted that the order clearly states that, "Plaintiff may proceed with her claims against defendants Rios, Newsome, DeSole, D'Angelis, Gardner, and Higgins." There is nothing unclear about that statement - it plainly holds that plaintiff may proceed with all such claims. Accordingly, state defendants' application for "clarification" of that determination must be denied.

State defendants' motion for reconsideration also must be denied. State defendants have failed to demonstrate that the Court overlooked controlling decisions or data that would have changed its conclusions in its denial of their applications for dismissal. Additionally, movants have failed to demonstrate that the relief requested would correct a clear error of law or prevent manifest injustice. *Cioce v. County of Westchester*, 2005 U.S. App. LEXIS 6587 (2d Cir. 2005); *Key Mechanical Inc. v. BDC 56 LLC (In re BDC 56 LLC)*, 330 F.3d 111 (2d Cir. 2003).

Conclusion

Based upon the foregoing, it is respectfully submitted that movants' cross motion must

By. 

JUDITH B. MEMBLATT

Plaintiff Pro Se

98-51 65th Avenue #2A

Rego Park, NY 11374

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NEW YORK

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JUDITH B. MEMBLATT,

Plaintiff,

-against-

Affidavit of Service
05 CV 1021 (RJD) (LB)

Pro Se

JAIME A. RIOS, et al.,

Defendants.
-----X

I, Judith B. Memblatt, the plaintiff herein, declare under penalty of perjury that on December 14, 2006, I served the within Memorandum of Law in Opposition upon defendants Gerard J. Sweeney, Michael H. Reich and Estate of Thomas J. Manton, by depositing a true copy thereof for each said defendant enclosed in a sealed post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within this State, addressed to the attorney for said defendants at the office address of said attorney as follows:

John E. Quinn, Esq.
Renfro & Quinn
118-35 Queens Blvd.
14th Floor
Forest Hills, NY 11375

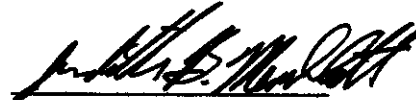
I additionally declare under penalty of perjury that on December 14, 2006, I served the within Memorandum of Law in Opposition upon defendant Karen Koslowitz by depositing a true copy thereof enclosed in a sealed post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within this State, addressed to the attorney for said defendant at the office address of said attorney as follows:

Madaleine S. Egelfeld, Esq.
125-10 Queens Blvd.
Suite 311
Kew Gardens, NY 11415

I further declare under penalty of perjury that on December 14, 2006, I served the within Memorandum of Law in Opposition upon defendants Jaime A. Rios, Steven W. Fisher, Jonathan Lippman, Lauren DeSole, Anthony D'Angelis, Robert W. Gardner, Sandra Newsome and Heidi Higgins by depositing a true copy thereof for each said defendant enclosed in a sealed post-paid wrapper, in an official depository under the exclusive care and custody of the United States Postal Service within this State,

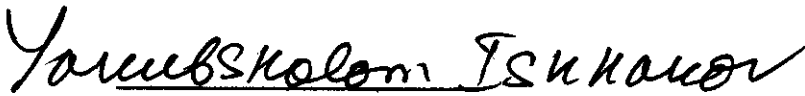
addressed to the attorney for said defendants at the office address of said attorney as follows:

Constantine A. Speres
Assistant Attorney General
State of New York
Office of the Attorney General
120 Broadway
New York, NY 10271



JUDITH B. MEMBLATT
Plaintiff Pro Se
98-51 65th Avenue #2A
Rego Park, NY 11374

Sworn to before me this
14th day of December 2006



Notary Public

YAKUBSHOLOM ISKHAKOV
NOTARY PUBLIC-STATE OF NEW YORK
No. 011S6137786
Qualified in Queens County
My Commission Expires December 05, 2009



FILED
IN CLERK'S OFFICE
U.S. DISTRICT COURT, E.D.N.Y.
★ DEC 18 2006 ★
BROOKLYN OFFICE

Judith B. Memblatt, Esq.
98-51 65th Avenue #2A
Rego Park, NY 11374
646-239-2635

**CERTIFIED MAIL
RETURN RECEIPT REQUESTED**

December 14, 2006

**Pro Se Office
Clerk of U.S. District Court
Eastern District of New York
225 Cadman Plaza East
Brooklyn, New York 11201**

**Re: Memblatt v. Rios, et al.
Case No. 05 CV 1021 (RJD) (LB)**

Dear Sir or Madam:

Enclosed please find the originals and four copies of Plaintiff's Memorandum of Law in Opposition (Re: State Defendants' Cross-Motion for Reconsideration) and Affidavit of Service dated December 14, 2006.

It is respectfully requested that you file these papers.

Please furnish me with a stamped copy of the aforementioned papers. I have enclosed a stamped, self-addressed envelope for that purpose.

Thank you for your attention to this matter.

Sincerely,



**Judith B. Memblatt, Esq.
Plaintiff Pro Se**

Enc.